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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of  
  
Reexamination of the Comparative  
Standards for New Noncommercial  
Educational Applicants

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) MM Docket No. 95-31  
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To: The Commission

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COMMENTS OF  
THE MOODY BIBLE INSTITUTE OF CHICAGO

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COMMENTS OF  
THE MOODY BIBLE INSTITUTE OF CHICAGO

The Moody Bible Institute of Chicago (hereafter "Moody"), by its undersigned counsel, hereby respectfully submits its Comments in connection with the above-captioned NOTICE OF PROPOSED RULEMAKING<sup>1</sup> (hereafter the "Notice") reexamining the comparative standards for mutually exclusive, noncommercial educational applications. Moody understands from the Notice that the Commission is seeking comments relating to possible modification of the criteria currently used to select among competing applicants for new noncommercial educational (hereafter "NCE") broadcast facilities, but not the standards applicable to resolving mutually exclusive applications filed against license renewal applications.<sup>2</sup> Moody's comments will suggest modifications to the present criteria for selecting among competing applicants that it believes will greatly help expedite

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1 FCC 95-79, released March 17, 1995.

2 Notice at footnote 1.

the processing and final resolution of such applications.<sup>3</sup>

## I. INTRODUCTION

1. Moody is the Commission licensee/permittee of the following noncommercial broadcast stations:

WMBI(AM & FM)	Chicago, Illinois
KMBI(AM & FM)	Spokane, Washington
WCRF(FM)	Cleveland, Ohio
WDLM(AM & FM)	East Moline, Illinois
WMBW(FM)	Chattanooga, Tennessee
WKES(FM)	St. Petersburg, Florida
WRMB(FM)	Boynton Beach, Florida
WMBV(FM)	Dixon's Mills, Alabama
WAFS(AM)	Atlanta, Georgia
WGNB(FM)	Zeeland, Michigan
WJSO(FM)	Pikeville, Kentucky
WGNR(FM)	Monee, Illinois
WIWC(FM)	Kokomo, Indiana
WVMS(FM)	Sandusky, Ohio
WMTW(FM)	Crossville, Tennessee
BPED-931216MA	New Castle, Pennsylvania
BPED-920811MB	Murfreesboro, Tennessee

Moody has been a noncommercial broadcast licensee of the Commission since 1936. In addition, Moody is presently a mutually exclusive applicant for a noncommercial FM station at Crown Point, Indiana (BPED-900809MB). Moody has in the past been confronted with the necessity of dealing with the Commission's vague NCE comparative hearing standards and agrees with the basic premise of the Notice that these standards need revision. Moody

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3 Based on Moody's experience with the processing of NCE applications, it generally takes the Commission six to nine months after receipt of an application to review and accept it for filing. The application is then placed on a "A cut-off list" which notes that the application has been accepted for filing and solicits mutually exclusive applications and/or comments. If one or more mutually exclusive applications are timely filed in response to the "A cut-off list", it normally takes the Commission two to three years from that point before the applications are designated for a comparative hearing.

also agrees that some version of a "point system" would be the best basis on which to decide the respective merits of mutually exclusive applications for NCE stations.

II. THE COMMISSION SHOULD SCRUTINIZE NCE APPLICATIONS TO  
ENSURE APPLICANTS POSSESS THE BASIC LEGAL QUALIFICATIONS  
TO HOLD A NONCOMMERCIAL LICENSE

2. Moody submits that, as an initial matter, the Commission can conserve its NCE application processing resources by requiring applicants for NCE spectrum to demonstrate that they possess the basic legal qualifications to hold a NCE license. Section 73.5034 of the Commission's rules provides that a noncommercial educational broadcast station will be licensed only to a non-profit educational organization. Moody's experience has been that many applications for NCE spectrum are filed by individuals or groups that are not non-profit educational organizations. Moody believes that the Commission would greatly diminish the filing of applications by unqualified applicants, and lessen the number of potential comparative hearing situations, by requiring applicants for NCE spectrum that are not current FCC NCE licensees to demonstrate their Section 501(c)(3) non-profit status under the rules and regulations of the Internal Revenue Service. The Commission can accomplish this by requiring applicants for NCE stations to file copies of their I.R.S. Section 501(c)(3) determination letters with their applications. Existing NCE licensees should be exempted from making this showing.

### III. INITIAL QUESTIONS FOR COMMENT FROM NOTICE

3. The Notice relies heavily on joint comments filed earlier in this proceeding by The Association of America's Public Television Stations and National Public Radio (hereafter "APTS/NPR") and comments filed by the National Federation of Community Broadcasters (hereafter the "NFCB"). APTS/NPR and NFCB proposed a number of suggested changes in the NCE comparative criteria. Moody will address the Commission's initial inquiry on these suggestions in the order contained in the Notice and add its suggestions on proposed changes in the criteria.

#### A. INITIAL QUESTIONS RAISED IN THE NOTICE

1. Generally, whether the existing NCE criteria should be retained and, if so, whether the "refinements" to the criteria proposed by APTS/NPR are appropriate. Specifically, are certain of the APTS/NPR proposals, including for example the proposals to favor applicants with objectives that are "directed outwardly to the ...listening community and not exclusively to the licensee itself" to favor applicants with a governing board that "is broadly representative of the community to be served" and to favor applicants who can demonstrate operating efficiencies through "common ownership" likely to unfairly disadvantage certain types of applicants and why?
2. Should the factors enumerated in (1) above and/or other factors APTS/NPR proposed be eliminated or modified? Should the factors proposed by APTS/NPR be weighted in the manner suggested? If factors in addition to those proposed by APTS/NPR should be considered, what are they and how should they be weighted?
4. Moody submits that any subjective criteria as proposed by APTS/NPR is inherently unworkable and unduly complicates the comparative hearing process. How can the Commission objectively ascertain whether an applicant's objectives are "directed outwardly to the ...listening community and not exclusively to

the licensee itself" to a comparatively greater extent than another applicant? What hard evidence can an applicant proffer in the context of a comparative hearing to demonstrate its objectives are directed "outwardly to the ...listening community" to a greater extent than a competing applicant or applicants? Moody submits that such a factor is inherently not factually quantifiable in the context of a comparative hearing process.

5. Moreover, what does "broadly representative of the community to be served" mean? Is this intended to imply that an applicant for a NCE station that will serve a community with a largely Hispanic population would be given a preference if its board members were also Hispanic? Or does "broadly representative" mean that the applicant's board is made up primarily of local representatives? Moody believes that the inherent vagueness of such a criteria renders it virtually unusable in a comparative hearing context. In fact, all of APTS/NPR's comparative criteria listed above are just as vague and amorphous as the present "integrated into the overall operations and objectives" criteria for NCE comparative applications

3. Should a "point system" be adopted in place of the existing NCE comparative criteria as proposed by NFCB? If so, are NFCB'S proposed comparative factors both appropriate and comprehensive, and are the weights suggested by NFCB appropriate? If not, what factors should be considered and how much weight should be given to each factor. Additionally, what factor(s) should be employed as a "tiebreaker" and how should those factors be applied?

6. Moody believes that a "point system" is the only objective and factually quantifiable comparative means for deciding among two or more mutually exclusive applications for NCE spectrum. However, NFCB's comparative factors leave a great deal to be desired. NFCB proposes "spectrum efficiency" as a factor to be considered and weighted in favor of an applicant. However, Section 307(b) of the Communications Act of 1934, as amended,<sup>5</sup> requires the Commission to distribute licenses so "...as to provide a fair, efficient, and equitable distribution of radio service" to the United States. Thus, to the extent one applicant proposes a significantly more efficient use of NCE spectrum, it is entitled to a dispositive comparative finding under the Act, not just a "weighted" credit.<sup>6</sup>

7. With regard to "weighing" based on "minority control" and "local residence of principals", the Commission should reject such an analysis based on its experience in comparative broadcast hearings for commercial FM allotments, and common sense. Unlike commercial broadcast licensees, NCE licensees are non-profit entities with boards that are made up of honorary or volunteer board members. These board members have no ownership interest or financial interest in the applicant or in the NCE station. They typically serve on an unpaid, volunteer basis. As a result, the make-up of the boards of such non-profit entities is constantly

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5 47 U.S.C.A. 307(b).

6 See, Radio Cincinnati v. FCC, 177 F.2d 92 (U.S. App. D.C. 1949)

changing. Therefore, it is unrealistic for the Commission to give a preference to one applicant over another based on the ephemeral characteristics of board members, be those characteristics minority group membership, local resident status or anything else.

8. Moreover, as the Commission has seen in the commercial comparative broadcast hearing sphere, preferences given to applicants based on race, sex, or other factors or characteristics merely result in "fronts" being placed in the applicant group to gain the corresponding comparative credit. As soon as the comparative hearing spotlight goes out, and the grant of the construction permit becomes "final", these comparative hearing "stooges" typically disappear since they are no longer of use to the applicant. Basing a long term NCE broadcast license on factors that are as changeable as the weather is sheer folly and defeats the Commission's mission statement of serving the public interest through the licensing of broadcast facilities.

9. Basing a comparative decision on program content, or the apparent code term found in the Notice of "local program origination", raises troubling constitutional questions. All programming by a NCE broadcast station emanates from a transmitter and antenna located somewhere in the local service area. This is a fact of broadcasting in the NCE spectrum. Therefore, the term "local program origination" must entail considerations of the content of the programming, i.e. whether or not it contains local information. The Commission would be



poorly advised to make program content an issue in deciding among NCE applicants and should avoid allocating points based thereon.

10. Thus, of the NFCB factors, only the finder's preference should be considered by the Commission. Moody believes that this factor should be given the greatest credit in noncommercial broadcast hearings. The reason for this is based on the manner in which applicants are required to prepare and file applications utilizing the "reserved" portion of the FM broadcast spectrum.

#### IV. THE MOODY 12 POINT PREFERENCE SYSTEM

##### A. FINDER'S PREFERENCE-5 POINTS

11. A party desiring to build and operate a new, noncommercial FM station has a greater burden to bear than its commercial FM counterpart. The Commission assigns commercial FM channels to communities through its FM Table Of Allotments.<sup>7</sup> Once a commercial FM channel is allocated to a community through the FM Table of Allotments, the Commission opens a "window" filing period and solicits the filing of applications to use that FM allotment in that community. Interested parties are made aware of the FM channel and the geographic coordinates that must be specified to utilize the allotment in the Report And Order assigning the channel to the specified community. Thus, the majority of the work involved in finding the channel and making it available for applications is undertaken by the Commission in connection with the rule making proceeding to add the channel allocation to the Table of Allotments. This is not the case with

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<sup>7</sup> See 47 C.F.R. 73.202.

channels in the portion of the FM band reserved for noncommercial use.

12. NCE applicants are required to undertake extensive engineering work on their own to ascertain whether a frequency is available for use in their proposed community of license. There is no NCE Table of Allotments. Rather, an interested party must undertake the expensive and time consuming process of ascertaining whether a frequency is available for use through an extensive engineering analysis. At the time this process is begun by the party, there is no guarantee that a channel will be found to be available for use. As the NCE band has become more and more congested, potential applicants for new NCE channels typically find, after expending significant engineering fees and costs, that there are no NCE frequencies available for use in a proposed community of license. The search for NCE frequencies has more and more become a gamble, with the engineering "stakes" rising and the odds of finding a channel diminishing.

13. Those parties who are willing to invest in expensive engineering studies to find available NCE frequencies, and who are successful in their search, then incur the additional expense entailed in the preparation and FCC filing of an FCC Form 340 NCE construction permit application. At the point this application is filed with the Commission, a NCE applicant may easily have between \$7,500.00 and \$15,000.00 in legal, engineering and associated fees and expenses tied up in its application.

14. More significantly, at the point the application is accepted for filing by the Commission, the American public learns for the first time that the proposed NCE frequency can be utilized for a new NCE broadcast station in the proposed community of license and serving the proposed service area. At present, the Commission then issues a Public Notice soliciting mutually exclusive applications and/or comments on the original application. Mutually exclusive applicants can draw upon the original applicant's hard work and expense and file competing applications. The original applicant finds that under the present comparative hearing process it receives no credit for its pioneering efforts in ascertaining the availability of the NCE channel. In fact, its pioneering efforts are ignored altogether in the comparative hearing process. This is inherently unfair and should be remedied under the new comparative standards for new NCE applications.

15. Moody believes that a finder's preference of five (5) points should be given to the original applicant among mutually exclusive applications in a NCE comparative hearing. This point preference should be the largest amount allocated for any one factor. Moody believes that the allocation of these points to the original applicant is justified by two factors. First, it is equitable to reward the finder for its pioneering efforts in isolating the NCE frequency for use. Second, such a point preference encourages parties to undertake the necessary effort and expense to find frequencies and apply for new NCE stations,

thereby increasing the number of NCE stations and adding to the diversity of NCE broadcast voices throughout the United States.

B. MERITORIOUS BROADCAST RECORD PREFERENCE-3 POINTS

16. Every year the Commission rescinds construction permits for new NCE stations due to the failure of the permittee/applicant to actually build the station for which it has been given a construction permit. Many well-intentioned NCE applicants find that building a new NCE broadcast station is significantly more difficult than they had anticipated and abandon the project.

17. On the other hand, there are NCE licensees with a long record of building the NCE stations for which they have been given construction permits. In many cases, these NCE licensees can demonstrate a long and meritorious record of broadcast service in connection with station operation. Such a record is the clearest indication possible that the applicant will, in all likelihood, provide a meritorious broadcast service on a new, NCE station. Moody believes that applicants for new NCE stations who can demonstrate a past record of meeting their public service mandate under the Communications Act of 1934, as amended, should be given preferential points over an applicant with no prior NCE broadcast record, or one who cannot demonstrate such a meritorious past record of service. Under the proposed Moody 12 Point System, these applicants would receive three (3) preference points.

### C. LOCAL ADVISORY BOARD-3 POINTS

18. Moody supports the concept of preference points being awarded to applicants who have a local advisory board to help the applicant remain aware of local problems, needs and interests. The Moody governing board is made up of a diverse group of citizens from all regions of the United States. Moody utilizes citizen advisory boards in many communities in which it operates NCE stations to help it remain aware at all times of the local problems, needs and interests of the community. In connection with these local advisory boards, Moody holds periodic open "town meetings" to allow citizens of the community of license to come forward and speak on issues of importance they feel are facing the community and should be addressed in Moody's programming. Moody submits that local advisory boards demonstrate a local commitment of a level equal to, if not in excess of, local residents on the applicant board of directors. Moody believes that in the scheme of its point system, this factor should be accorded three (3) points.

### D. PRIVATE FUNDING PREFERENCE-1 POINT

19. Moody believes that preference points should be accorded to applicants for new NCE stations that are privately funded and who do not, for the most part, rely on governmental funding for the construction and operation of the proposed station. Moody submits such a preference can reasonably be premised on at least two bases.

20. First, the future availability of funding for NCE stations from the federal government is in significant doubt. The meritorious plans by the Congress to balance the federal budget all encompass some diminution, if not the outright end, of federal funding for NCE broadcasting. Thus, applicants proposing to fund the construction and future operation of NCE stations from such public funding are relying on an inherently dubious and unreliable source.

21. Moreover, the Commission should make an effort to encourage the privatization of NCE broadcasting and encourage the development of privately funded NCE stations. Such an action will help the Congress with its battle to balance the budget and demonstrate that NCE broadcasting can survive and flourish without the need for NCE broadcasters to rely on public funding provided by the overburdened American taxpayer. Moody does not, and has not, relied on federal funding for the construction and operation of its NCE broadcast stations. Rather, Moody has been able to provide America with quality noncommercial educational programming through its fund raising efforts in the private sector. Moody believes that applicants willing to fund new NCE stations through private sources should be encouraged to do so via a point preference in NCE comparative hearings. Thus, privately funded NCE applicants should receive a one (1) point preference over those who intend to rely on funds provided by Congress or through federal programs funded by tax revenues.

22. Under the Moody 12 Point System, NCE applicants would receive preference points for: finder's preference (5 points); meritorious past broadcast record (3 points); local advisory board (3 points); and private funding (1 point).

#### V. SHARE TIME ARRANGEMENT

23. The Notice poses the question of whether the mandatory "share time" arrangement should be retained as a means of resolving NCE mutually exclusive groups. Moody does not believe that the retention of this vestige of the Commission's NCE comparative hearing past will be necessary with the adoption of the Moody 12 Point System. However, Moody would favor its retention in the event the 12 Point System is not adopted.

24. The "share time arrangement" imposed by the Commission on mutually exclusive NCE applicants in comparative hearings has been beneficial. Under this "arrangement", mutually exclusive NCE applicants who are found in comparative hearing to be equally deserving of utilizing the subject frequency have literally been required to "share" the use of the frequency. This generally takes the form of a Commission dictated arrangement wherein each applicant has the right to utilize the frequency for an equal number of hours each day. In the case of two applicants, one utilizes the frequency for twelve hours each day, say from 6 a.m. to 6 p.m., and the other uses the frequency for the other twelve hours in the day. Every six months, the two applicants change their twelve hours of operation to those utilized by the other. The Commission will adopt a different share time arrangement if

the applicants work out a private agreement and submit it for approval.

25. This share time arrangement has proven to be generally unworkable and disincentivises mutually exclusive NCE applicants from engaging in comparative hearings. Stated differently, because the share time arrangement is deemed to be so unacceptable to mutually exclusive NCE applicants, it tends to foster settlements in NCE comparative hearings wherein one party dismisses in its applicant in favor of the other; normally subject to the Commission approving the reimbursement of the dismissing applicant's expenses by the surviving applicant. To this extent the share time arrangement aids in the "weeding out process" of NCE applications and has served a useful purpose in the past. Moody would encourage the Commission to consider retaining the policy should it not adopt the Moody 12 Point System.

#### VI. STATE-OWNED BROADCASTERS

26. The notice solicits comments on whether "state-owned public broadcasters" should be treated under a different comparative "approach" than other NCE applicants. Moody has addressed this issue in its 12 Point System. State-owned applicants would not be eligible to receive the one (1) point private funding preference credit if they relied on public funding for the proposed station. Otherwise, Moody sees no rational basis for a disparate treatment of state-owned NCE applicants.



## VII. HOLDING PERIOD FOR NCE STATIONS

27. Moody sees no reason for imposing a "holding period" for NCE stations granted as a result of comparative hearings. As noted previously, NCE licensees must be non-profit organizations. There is not, nor has there ever been, a trading market for NCE broadcast stations. Unlike the commercial broadcast sector, there is no incentive for a NCE applicant to prosecute an NCE broadcast license with a profit motive, or in the hopes of trading in the NCE license.

28. Moody does believe, however, that NCE applicant groups who receive NCE licenses pursuant to a comparative hearing, but who fail to build the NCE station, should be penalized in some manner should they seek additional NCE licenses. Moody would propose a NCE comparative demerit for NCE applicants who have previously received NCE licenses for stations they did not build and operate. This demerit should run to the principals in the NCE applicant individually, and be attributed to any entity on which they are board members, as well as the NCE applicant entity that failed to build the prior station.

## VII. CONCLUSION

Moody has proposed a factually quantifiable point system that will enable the Commission to simplify the NCE comparative hearing process. Moreover, the Moody 12 Point System will allow applicants for new NCE stations to easily ascertain their comparative chances of winning a license in the context of a NCE comparative hearing. Such a simple, yet comparatively exacting

system, will help to expedite the NCE comparative hearing process, while ensuring that the most qualified NCE applicants receive new NCE licenses to serve the public interest, convenience and necessity.

Respectfully submitted

Mopdy Bible Institute of Chicago

By: 

Jeffrey D. Southmayd

Its Attorney

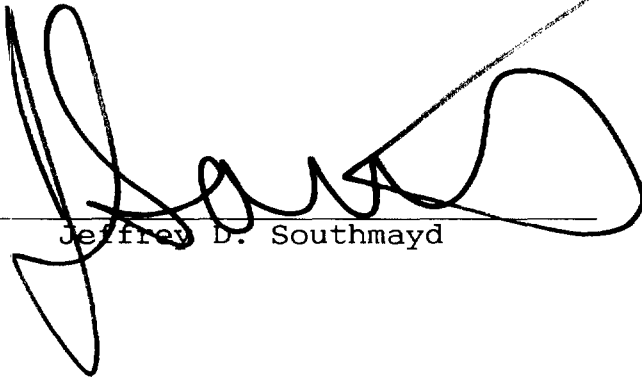
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Date: May 15, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Comments of the Moody Bible Institute of Chicago" were sent by first class United States mail, postage prepaid, on this 15th day of May, 1995 to the following:

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